

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

DOROTHY BROCK-BURCHETT

PLAINTIFF

VS.

No. 4:20-cv-374-DPM

**MCNEW FABRICATION, INC.,
and JEFFREY MCNEW**

DEFENDANTS

26.2 PRETRIAL DISCLOSURES

COME NOW Defendant McNew Fabrication, Inc., and Jeffrey McNew, by and through his attorney Quincy McKinney, and pursuant to this Court's Amended Scheduling Order, offers the following Local Rule 26.2 Pre-Trial Disclosures:

1. Defendant McNew Fabrication, Inc. and Jeff McNew submit these disclosures through counsel.
2. The Defendant is represent by Quincy McKinney whose address and contact information is found below. The Plaintiff is represented by the Sanford Law Firm by and through Sean Short, Vanessa Kenny, and Josh Sanford whose contact information is:

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3. If the Parties are unable to settle, they anticipate needing up to 2 days for trial.

4. The prospects for settlement are not good given the complexities and competing claims in competing cases. The parties have discussed settlement informally and have attended a settlement conference under the direction of a magistrate judge without success.

5. There are no objections to jurisdiction.

6. There are no current Pending Motions

7. Summary of Facts:

Plaintiff was hired by McNew Fabrication, Inc. (hereinafter McNew) in 2016. Plaintiff was hired at a salary of \$600 per week. This was to be a true salary in that Plaintiff was to be paid the same set amount each week and her pay was not subject to any contingencies such as sales, production, performance, or hours worked. Despite McNew agreeing to pay Plaintiff \$600 per week Plaintiff was paying herself a weekly salary of \$1,000 per week (Plaintiff wrote and signed all checks and was in charge of payroll). Plaintiff hand wrote some of her pay checks and some she sent through McNew's payroll processing company ADP. When she was paid through ADP payroll processing system Plaintiff received a payroll check stub. Because not all of her pay checks were processed by ADP her W2 and payroll summary forms from ADP are not accurate of the amount she was actually paid. Dorothy received a W2 at the end of each year. Plaintiff was responsible for making sure the W2's and 1099's were processed and sent out.

Plaintiff handled all banking including deposits, writing checks, and reconciling bank statements. Plaintiff handled all financial affairs for Mr. McNew personally and for the business including paying bills, paying all taxes including personal taxes, business taxes, payroll taxes, and property taxes; she handled collections, invoicing, factoring, accounts receivable and

accounts payable, making travel arrangements when Mr. McNew went out of town for work, processing mail, handling payroll, answering the phone in the office; she handled all insurance including workmen's comp, general liability, health, and vehicle insurance; she would handle inventory and purchasing and she claimed to be working on an SBA loan on behalf of McNew. Plaintiff would communicate directly with staff at McNew's bank and discuss McNew's accounts, loans, etc. Additionally, Plaintiff would sign for new or reissued debit or fuel cards numerous times throughout her employment.

Following the termination of Plaintiff's employment in late 2019 with McNew she claimed that she worked overtime and was not paid for her overtime hours and that there were weeks where she was not paid.

8. As of right now there are no proposed stipulations but we are still working on it.

9. Defendant contends that Plaintiff falls within the administrative exemption because of the character of the work she performed and her job duties and that she was not entitled to overtime and that even if she did not fall under the administrative exemption Defendant contests Plaintiff's assertion that she worked overtime and that there were weeks where she was not paid.

10. Defendant believes that Plaintiff qualifies under the administrative exemption. This is in dispute. There are a few disagreements over several jury instructions but we are working on those.

11. Exhibits Expected to be offered:

- i. Dorothy Burchette and McNew Verizon Phone Records and summaries of phone records.
- ii. Dorothy Burchett's bank records

- iii. McNew Fabrication, Inc's bank records including statements, debit card transactions, cancelled checks, deposit and withdrawal slips, etc
- iv. Mcnew Fabrication, Inc debit card request forms
- v. McNew Fabrication SBA and other Bank loans documentation including applications etc
- vi. Dorothy Burchett Worker's Compensation Claim Paperwork including transcript
- vii. McNew Credit Card Statements
- viii. McNew to Burchett Power of Attorney and POA revocation
- ix.

Exhibits that may be offered:

- i. Henry Hanes bank records,
- ii. Dorothy Brock Burchett pay records from Henry Hanes
- iii. Melanie Blake timesheet and notary records
- vi. Dorothy Burchett handwritten journal entries

12. Witnesses:

- i. Jeff McNew-32 Western Hills Circle, Greenbrier, Arkansas 72058, 501-733-5287
- ii. Katherine Varnell-32 Western Hills Circle, Greenbrier, Arkansas 72058, 479-858-8506
- iii. Mike Tindall-3040 Old Morrilton Hwy Apt. Conway, Arkansas, 72032, 501-581-2367
- iv. Mark Yerby-307 A Redbud St., Perryville, Arkansas, 72126, 501-472-6650

Potential Witnesses:

i. Melanie Blake, 620 Chestnut St., Conway, Arkansas, 72032, 501-328-4663

13. Discovery is completed.

14. I think we will take a day and a half. We are working on stipulating to exhibits and agreeing on additional jury instructions. We have already agreed on a number of them.

Respectfully submitted,

**MCNEW FABRICATION, INC. and
JEFFREY MCNEW, DEFENDANTS**

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/s/ Quincy W. McKinney
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CERTIFICATE OF SERVICE

I, Quincy McKinney, do hereby certify that a true and correct copy of the foregoing was sent to the following via electronic mail system communication on this 4th day of May 2023.

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/s/ Quincy W. McKinney
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